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COURT RULES

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NM ORDER 19
C.O. 19
COURT RULES
STATE OF NEW MEXICO
RULES GOVERNING DISCIPLINE
Rule 17-304

Effective April 30, 2007

RULES/ORDERS**From the New Mexico Supreme Court****NO. 07-8300-10 IN THE MATTER OF THE AMENDMENTS OF RULE 17-304 NMRA OF THE RULES GOVERNING DISCIPLINE****ORDER**

WHEREAS, this matter came on for consideration by the Court upon recommendation of the Disciplinary Board to amend Rule 17-304 NMRA of the Rules Governing Discipline, and the Court having considered said recommendation and being sufficiently advised, Chief Justice Edward L. Chávez Justice Pamela B. Minzner, Justice Patricio M. Serna, Justice Petra Jimenez Maes, and Justice Richard C. Bosson concurring;

NOW, THEREFORE, IT IS ORDERED that the recommendation hereby is ADOPTED and the amendments of Rule 17-304 NMRA of the Rules Governing Discipline hereby are APPROVED;

IT IS FURTHER ORDERED that the amendments of Rule 17-304 NMRA of the Rules Governing Discipline shall be **effective immediately**;

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendments of the above-referenced rule by publishing the same in the *Bar Bulletin* and NMRA.

DONE at Santa Fe, New Mexico, this 30th day of April, 2007.

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Chief Justice Edward L. Chávez

Justice Pamela B. Minzner

Justice Patricio M. Serna

Justice Petra Jimenez Maes

Justice Richard C. Bosson

<< NM R DISC Rule 17-304 >>

17-304. Confidentiality of investigations; exceptions; hearings.

A. Confidentiality. Except as otherwise provided by this rule, any investigation and any investigatory hearing conducted by or under the direction of disciplinary counsel, or disciplinary counsel's authorized agents, shall be held entirely confidential by disciplinary counsel and by disciplinary counsel's authorized agents unless and until they:

(1) become matters of public record by:

(a) the filing of a formal specification of charges with the Disciplinary Board pursuant to Rule 17-309 NMRA;

(b) the filing of a summary suspension proceeding pursuant to Rule 17-207 NMRA;

(c) the filing of an incompetency or incapacity proceeding pursuant to Rule 17-208 NMRA;

(d) the filing of a reinstatement proceeding pursuant to Rule 17-214 NMRA; or

(e) the filing of a motion for order to show cause why a respondent should not be held in contempt pursuant to Paragraph G of Rule 17-206 NMRA; or

(2) are otherwise released according to these rules.

B. Exceptions. Information relating to disciplinary proceedings may be released by disciplinary counsel prior to filing formal charges as follows:

(1) where investigation reasonably causes disciplinary counsel to believe in good faith that a crime may have been committed by an attorney, the name of the subject, general nature of the possible crime, relevant facts and documents and names of known witnesses to relevant facts shall be made available to an appropriate prosecuting authority;

(2) if the respondent-attorney has filed with the office of disciplinary counsel a written waiver of confidentiality; or

(3) upon written request from the Client Protection Fund Commission, such information as may assist the committee in determining the validity or worthiness

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of a specific claim filed with that commission may be submitted to that commission with the understanding and condition that commission members receiving and reviewing such information are subject to the provisions of Subparagraph (5) of Paragraph C of Rule 17-105 NMRA as well as the rules of confidentiality governing the Client Protection Fund Commission.

C. Exceptions to public record. The Disciplinary Board or a hearing committee may, in the exercise of discretion, place the following matters under seal, upon request of disciplinary counsel, the respondent or sua sponte:

(1) documents, pleadings and testimony relating to the physical or mental condition or treatment of the respondent;

(2) matters regarding allegations of substance abuse by the respondent; or

(3) matters resulting in private discipline or dismissal pursuant to a consent to discipline agreement, the recommendation of a hearing committee, the decision of the Disciplinary Board. Upon the filing of proceedings in the Supreme Court, the proceedings shall no longer be confidential or sealed unless ordered by the Supreme Court on its own motion or the motion of a party. A party may request the proceedings be sealed by the Supreme Court by filing a motion to seal the proceedings with the pleadings and transcript.

D. Immunity from civil suit. Members of the board, members of hearing committees, disciplinary counsel, monitors or any other person acting on their behalf and staff shall be immune from suit as provided by statute or common law for all conduct in the course of their official duties. Immunity from suit shall also extend, as provided by statute or common law, to complainants and witnesses for all communications to the board, hearing committees or disciplinary counsel relating to lawyer misconduct or disability.

E. Witness immunity. If a person has been or may be called to testify or to produce a record, document, or other object in an official proceeding conducted under the disciplinary authority of a hearing officer, hearing committee, the board or the Supreme Court, disciplinary counsel may file a written application with the Supreme Court requesting the Court to issue a written order requiring the person to testify or to produce the record, document or other object notwithstanding his privilege against self-incrimination. Disciplinary counsel shall give the appropriate prosecuting authority notice of any application filed pursuant to this paragraph. Upon consideration of the application and any objection that may be filed by the appropriate prosecuting authority, the Court may grant the application and issue a written order pursuant to this paragraph if it finds:

(1) the testimony, or the record, document or other object may be necessary to protect the public interest; and

(2) the person has refused or is likely to refuse to testify or to produce the record, document or other subject on the basis of his privilege against self-incrimination.

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F. Use of evidence obtained under immunity order precluded. Evidence compelled under an order issued pursuant to the provisions of Paragraph E of this rule requiring testimony or the production of a record, document or other object notwithstanding a privilege against self-incrimination, or any information directly or indirectly derived from such evidence, may not be used against the person compelled to testify or produce in any criminal case, except a prosecution for perjury committed in the course of the testimony or in a contempt proceeding for failure to comply with the order.

G. Hearings. Formal proceedings conducted before a hearing committee or the Disciplinary Board shall be open to the public. Any person may publicly comment thereon. Attorneys remain subject to the restrictions of Rule 16-306 NMRA.

H. Disposition. Complainants shall be advised every six (6) months as to the status of the investigation and shall be immediately advised of the final disposition of their complaints.

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END OF DOCUMENT